

§ 1951.221

7 CFR Ch. XVIII (1–1–01 Edition)

(1) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) *Appraisal report.* If required, a current appraisal report will be completed in accordance with §1942.3 of subpart A of part 1942 of this chapter. The appraisal will be completed by a qualified FmHA or its successor agency under Public Law 103-354 employee or an independent appraiser as determined appropriate by the approval official.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 775, Jan. 9, 1992; 57 FR 21199, May 19, 1992; 57 FR 36591, Aug. 14, 1992]

§ 1951.221 Collections, payments and refunds.

Collections are processed in accordance with subpart B of part 1951 of this chapter. Payments and refunds are handled in accordance with the following:

(a) *Community and Insured Business Programs.* (1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

(2) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA or its successor agency under Public Law 103-354's security.

(i) Distribution of such payments is made as follows:

(A) First, to the FmHA or its successor agency under Public Law 103-354 loan(s) in proportion to the delinquency existing on each. Any excess

will be distributed in accordance with paragraphs (a)(2)(i) (B) and (C) of this section.

(B) Second, to the FmHA or its successor agency under Public Law 103-354 loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on FmHA or its successor agency under Public Law 103-354 loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in §1806.5(b) of subpart A of part 1806 (paragraph V B of FmHA or its successor agency under Public Law 103-354 Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA or its successor agency under Public Law 103-354 loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments

will be applied to the final unpaid principal installment.

(b) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* (1) Regular payments for such loans are defined in § 1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in § 1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(b) of that subpart.

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103-354 to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA or its successor agency under Public Law 103-354 lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the FmHA or its successor agency under Public Law 103-354 indebtedness, and the amount must be within the approval official's authority as set forth in exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) It must be determined that the borrower cannot refinance its FmHA or its successor agency under Public Law 103-354 debt in accordance with subpart F of part 1951 of this chapter.

(3) The transaction will further the purposes for which the FmHA or its successor agency under Public Law 103-354 loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA or its successor agency under Public Law 103-354 debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to § 1942.18 of subpart A of part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the FmHA or its successor agency under Public Law 103-354 will obtain a mortgage on the purchased land.

(8) When the transaction involves more than \$10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA or its successor agency under Public Law 103-354 loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(11) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(b) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under subpart A of part 1901 of this chapter.

(c) *Processing.* The case file is to include:

(1) The borrower's written request on Form FmHA or its successor agency